

## WEST VIRGINIA CODE: §17-2E-3

### **§17-2E-3. Use of rights-of-way. Broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation.**

(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications carrier must enter into an agreement with the Division consistent with the requirements of this article.

(b) Before granting permitted longitudinal access or wireless access to a right-of-way, the Division of Highways shall

(1) First enter into an agreement with a telecommunications carrier that is competitively neutral and nondiscriminatory as to other telecommunications carriers.

(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the Division may issue a permit granting access under this section: Provided, That the Division of Highways shall comply with all applicable federal regulations with respect to approval of an agreement, including but not limited to 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:

(A) Specify the terms and conditions for renegotiation of the agreement;

(B) Set forth the maintenance requirements for each telecommunications facility;

(C) Be nonexclusive; and

(D) Be for a term of not more than 30 years.

(b) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a) of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant to this article.

(c) A telecommunications carrier shall compensate the Division of Highways for access to a right-of-way for the construction, installation, and maintenance of telecommunication facilities, the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

(1) At fair market value;

(2) Competitively neutral;

- (3) Nondiscriminatory;
  - (4) Open to public inspection;
  - (5) Calculated based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region; and once calculated, set at an amount that encourages the deployment of digital infrastructure within this State;
  - (6) Paid in monetary compensation or with in-kind compensation, or a combination of monetary compensation and in-kind compensation; and
  - (7) Paid in a lump-sum payment or in annual installments, as agreed to by the telecommunications carrier and the Division of Highways.
- (d) The Division may consider adjustments for areas, the Division in conjunction with the Council, determines are underserved or unserved areas of the state and may consider the value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.
- (e) For the purpose of determining the amount of compensation a telecommunications carrier must pay the Division of Highways for the use of spare conduit or excess conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the Division may:
- (1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the Division of Highways, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and
  - (2) If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.
- (f) The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division of Highways would charge if the compensation were paid solely with money.
- (g) The provisions of this article shall not apply to the relocation or modification of existing telecommunication facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.